IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Civil Writ Petition No.13964 of 1990

Date of Decision: December 13, 2007

Dr.Shobha Rani Dhiman .....Petitioner

Versus

Punjabi University, Patiala and others .....Respondents

CORAM:- HON'BLE MR.JUSTICE S. D. ANAND

Present: Mr.SK Sharma, Advocate for the petitioner.

Mr.Gur Rattan Pal Singh, Advocate and
Mr.Atul Mahajan, Advocate for respondent No.1.

Mr.Vivek Sharma, Advocate for respondents No.3, 4 and 8.

S. D. ANAND, J.

1. The pleadings-based facts, which are even otherwise presently conceded, are as under:

2. The petitioner was appointed a Lecturer in Human Biology w.e.f. 1.9.1988, vide appointment letter (Annexure P1). The initial appointment was only for a duration of three months and was on adhoc basis. The period of appointment got extended from time to time. The last extension granted in that behalf concluded on 31.5.1990. The further extension, though recommended by the Head of the Department vide letter dated 21.5.1990 (Annexure P3), was denied to her.

3, Respondent No.3 – Dr.Promila Malhotra had been appointed a Lecturer in Research Centre in Physical Education and Sports (Department of Human Biology), on adhoc basis, vide appointment letter dated 4.3.1986. The appointment was to last for a duration of six months or the current academic session, whichever was earlier. Thereafter, respondent No.1 – Punjabi University advertised a post of Lecturer in Human Biology. The petitioner, along with eight others, was interviewed by the Selection Committee on 11.8.1986. The Committee recommended the name of one Dr.Rupinder Mokha for appointment to the post aforementioned, while respondent No.3 was retained on the waiting list at Serial No.1. The recommendation made by the Selection Committee was approved by the Syndicate in a meeting held on 30.9.1986. Even thereafter, respondent No.3 continued on extension from time to time. In the meantime, respondent No.3 kept on representing for being accorded the status of a regular appointee. She was ultimately impelled to file Civil Writ Petition No.5035 of 1990 (Annexure P5). The Head of the Department of Human Biology (Punjabi University) did not file any counter. The Punjabi University, in its counter, had taken up a stance that as the initial appointment of respondent No.3 was on adhoc basis, she could not be made a regular appointee. After noticing that no counter had been filed on behalf of the Head of the Department of Human Biology, this Court disposed of the Writ Petition on 31.5.1990 (Annexure P5). The relevant extract of the order is re-produced as under:

> "In the circumstances, it is directed that the case of the petitioner be considered by Dean of the Faculty – respondent No.2 before any other fresh appointment is made for the post.

The writ petition is disposed of accordingly."

4. The Syndicate, in the course of a meeting held on 29.6.1990, passed Resolution No.285 dated 29.6.1990 and recorded the following decision:

> "On the basis of court's above given orders, Dean, Faculty of Life Sciences was requested to give his comments. He has clarified in his opinion that Dr. (Mrs.) Promila Malhotra is fully qualified for the post advertised with specialisation, i.e. "any aspect of Cell Biology". He has recommended that she be appointed as Lecturer in HUMAN BIOLOGY Department without facing the Selection Committee.
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> It was resolved that in the light of the orders of the Punjab and Haryana High Court, Dr.(Miss) Promila Malhotra be appointed as Lecturer in Human Biology Department against the advertised post with Cell Biology Specialisation."

5. In that manner, respondent No.3 was appointed on regular basis.

6. Respondent No.8 – Dr.Satbir Kaur had been appointed a Lecturer in Human Biology against a leave vacancy. It was indicated in her appointment letter itself that her appointment was purely temporary in character and would go upto 31.5.1993 or till the return to duty of the regular incumbent (Dr.S.M.S.Chahal), whichever was earlier. Pursuant to that appointment letter, she joined duty on 23.8.1989. Her representation for appointment on regular basis found favour with the Syndicate which passed Resolution No.308 dated 21.5.1993 regularising her services as Lecturer in Human Biology.

7. The precise grievance of the petitioner is that the Punjabi University, by denying regularisation to her and by regularising the services of respondents No.3 and 8, acted arbitrarily.

8. In its counter, respondent No.1 averred as under qua the regularisation of services of respondent No.3:

> "Upon detailed examination of the qualification of Dr.Promila Malhotra, Dean, Faculty of Life Sciences was of the considered opinion that Dr.Promila Malhotra was fully qualified for the post of Lecturer in Human Biology. Accordingly, based on the said recommendations, the University Syndicate decided in regard to the appointment of Dr.Promila Malhotra as Lecturer which is totally in consonance with the directions of this Hon'ble Court. It may be submitted that the Syndicate is fully competent to make appointment to posts of Lecturers."

9. Qua the regularisation of services of respondent No.8, the plea raised was that "the regularisation of services of Dr.Satbir Kaur was basically in view of the fact that (i) she had been appointed w.e.f. 23.8.89 much before the said decision dated 29.6.90 (para 20) of the Syndicate, and (ii) in the advertisement for the post against which Dr.Satbir Kaur had been selected, it was nowhere indicated that it was a leave vacancy."

10. Respondent No.3 did not contest the averment that she had been initially appointed on adhoc basis and that, on the basis of an interview held at a subsequent point of time, she had been retained at No.1 on the waiting list. She was subsequently impelled to file Civil Writ Petition No.5035 of 1990 to obtain regularisation of her services against the post of Lecturer in Human Biology. In the counter, the Punjabi University had

taken up an objection that she was not qualified for appointment as Lecturer. During the pendency of that Writ Petition, the post of Lecturer in Human Biology, with Cell Biology Specialization was advertised on 25.4.1990. She moved C.M. No.5711 of 1990 for the restraint of the respondents from conducting interviews in pursuance of that advertisement. This Court directed the respondent-University (vide order dated 31.5.1990) to consider her case before any fresh appointment for that post was made. The Dean of Faculty of Life Sciences considered her case for appointment in terms of the orders of this Court and found her qualified for appointment. The respondent-University also obtained the opinion of the Advocate General, Punjab who opined that she (respondent No.3) could be validly appointed in terms of the orders passed by this Court. It was in the above manner that a regular appointment was given to that respondent and her services were regularised vide Resolution dated 29.6.1990. However, she has not been paid salary for the period 1.6.1990 to 19.7.1990 though she had been discharging her duties as Lecturer during that period as well.

11. Respondent No.8 re-iterated the correctness of the approach of the Syndicate in regularising her services by averring that the impugned advertisement, against which she had applied, did not at all indicate that it was a leave vacancy and, thus, the Syndicate did not commit any error in regularising her services against a regular vacancy which arose on account of the non-joining of Dr.P.K. Sahajpal who was on leave since 14.11.1990 and did not re-join duty. His post was declared vacant in 1993. "It was against this regular vacant post that the case of the answering respondent was considered by the Syndicate in its meeting held on 21.5.1993."

12. (On point of fact, it may be noticed that this petition initially

came to be allowed by this Court on 10.5.1996. However, that order was recalled vide order dated 11.4.1997 passed by a Division Bench of this Court and the matter was ordered to be heard afresh. As the recall order has not been challenged till date, the circumstances occasioning the recall of the judgment are obviously not in issue as at the moment.)

13. I have heard Mr.SK Sharma, learned counsel for the petitioner, Mr.Gur Rattan Pal Singh, learned counsel for respondent No.1 and Mr.Vivek Sharma, learned counsel for respondents No.3, 4 and 8 and have carefully perused the records.

14. Insofar as the Punjabi University/respondent No.1 is concerned, it came into existence in terms of the Punjabi University Act, 1961 (hereinafter referred to as "the Act"). In terms of Section 12 of the Act, the Syndicate has been announced to be the Principal Executive Body of the University, vested with the power of management and administration of the revenue and property of the University. Apart therefrom, it is also responsible for conducting the administrative affairs of the University. The only rider thereto is the eventuality where the jurisdiction to discharge any particular function is vested in any other authority. Section 12 further provides that the teaching staff of the University shall be appointed on the recommendation of a Selection Committee constituted for the purpose. There being no provision in the Act or the statute regulating the procedure for appointment of the teachers, it is inferred that the power to lay down the procedure for selection of teachers lies with the Syndicate. A cue to the exercise of that power can be found in Resolution No.285 dated 29.6.1990 (Annexure R8/1). In the context of the extension (in service) of Shri Lakhbir Singh, who had been appointed against a leave vacancy on the

recommendation of the Selection Committee, the Syndicate recorded the following decision:

> "After discussion it was decided that the services of Shri Lakhbir Singh, Lecturer, Punjabi Department, who was appointed against a leave vacancy on the recommendation of Selection Committee be extended for 3 more months from 1.6.90 on the same terms and conditions and the vacancy no available on a regular post be filled through advertisement during this period.
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> It was also approved that whenever any post is filled up after advertising it as a leave vacancy and after a lapse of time, the said vacancy becomes available on a regular basis then the same should be re-advertised and thereafter filled so as to enable more meritorious candidates to apply for the same."
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> (underlining for emphasis)

15. It follows therefrom that the Syndicate had taken a decision that when a leave vacancy becomes available on regular basis, it should be re-advertised to enable more meritorious candidates to apply for appointment. That decision, as would be apparent from a perusal of the former part of Annexure R8/1, was in the context of the extension of services of Shri Lakhbir Singh, a Lecturer in the Punjabi University, who had been appointed against a leave vacancy, which (leave vacancy) had presently become available on regular basis. While extending the duration of appointment of Shri Lakhbir Singh for a period of three months w.e.f. 1.6.1990, it was decided by the Syndicate that "the vacancy now available on a regular post be filled through advertisement during this period."

16. In the light of the material obtaining on the file, the petitioner cannot raise a valid plea for regularisation of her services on the basis of the policy decision taken by the Syndicate. It is perhaps in the face of that position of facts and law that the petitioner raised a plea of arbitrariness so as to be able to put forward a claim of discrimination and get the benefit thereof. The validity or otherwise of the regular appointments given to respondents No.3 and 8 shall, thus, have to be adjudicated upon on the touchstone of Resolution No.285 dated 29.6.1990 (Annexure R8/1).

17. Insofar as respondent No.3 is concerned, she had been appointed on adhoc basis on 4.3.1986. It is not even the plea raised that her initial appointment was against a regular post. All that this Court had ordered (vide order dated 31.5.1990-Annexure P5), was to direct Dean of Punjab University to consider her plea for regularisation before any other fresh appointment is made for the post. In the preceding para of that order, this Court noticed that no counter had been filed by the Head of the Department and the stance taken up by the University was that respondent No.3 (petitioner in that case) was not qualified for the post. In the course of that very order, this Court noticed another plea by the Punjabi University that the Syndicate had expressed concern about the frequent extensions given to adhoc appointees and had also noticed the decision by the Syndicate that the term of adhoc appointees should be extended till the conclusion of the current academic session only in essential cases . The Syndicate had also decided that action should be taken to fill up the vacant posts. In the light of the above quoted observations made by this Court, the following decision taken by the Syndicate would not be appear to be in order:

> "It was resolved that in the light of the orders of the Punjab and Haryana High Court, Dr.(Miss) Promila Malhotra be appointed as Lecturer in Human Biology Department against the advertised post with Cell Biology Specialization."

18. In Annexure P12 itself, the Syndicate noticed that respondent No.3 – Dr.Promila Malhotra had been appointed on 4.3.1986 for a period of six months or till the conclusion of the academic session, whichever was earlier. It further noticed that the duration of her appointment was extended from time to time. It proceeded to notice that, in the meantime, a regular post of Lecturer was advertised and respondent No.3 was interviewed on 11.8.1986, along with other candidates, and her name was retained at No.1 in the waiting list, while recommending the name of some other candidate for appointment. The recommendation made by the Selection Committee for appointment of the candidate aforementioned was approved by the Syndicate in a meeting on 13.9.1986. In the light of those facts, the 'implicit' reliance placed by the Syndicate upon the orders dated 31.5.1990 of this Court in appointing respondent No.3 as Lecturer against a regular post was legally indefensible.

19. It would be apparent from the facts noticed above (which have been culled out from the material obtaining on the file) that the initial appointment of respondent No.3 on 4.3.1986 was adhoc in character. It was categorically indicated in the appointment letter that it was for a duration of six months or till the academic session, whichever was earlier. She, as per her own averment, appeared for interview on 11.8.1986 and her name was retained at No.1 in the waiting list. It is not even the averment by respondent No.3 or by the respondent-University that the candidate whose

name had been recommended for appointment, had not joined the post. Apart therefrom, the orders passed by this Court on 31.5.1990 (Annexure P5) nowhere directed the compulsive appointment of respondent No.3 to the post of Lecturer. All that this Court had done was to order the consideration of her name by the Competent Authority. That order also came about because the Head of the Department, to whom certain relevant averments in the course of the petition related, did not file a counter. While considering the name of respondent No.3 for appointment, the Competent Authority could not have given a complete go-bye to the principles of natural justice and fair play which incidentally were validated by the Syndicate on 29.6.1990 (Annexure R8/1) by deciding that a leave vacancy which becomes available on regular basis, should be re-advertised and thereafter filled up so as to enable more meritorious candidates to apply for the same. Where, then, was the question of any compulsion on the part of the respondent-University to issue appointment letter to respondent No.3 in compliance with the orders of this Court? Her initial appointment was, thus, on adhoc basis. She could not be appointed on the basis of the interview held on 11.8.1996 as the candidate recommended had indeed joined appointment. The orders passed by this Court only required consideration of her name by the Competent Authority. This Court nowhere directed that equal opportunity for employment may be denied to the other eligible candidates by giving a damn to the principles of fair play and natural justice. Examined, thus, from any angle, the regularisation of services of respondent No.3 to the post of Lecturer cannot be justified.

20. In the very context, it would be interesting to notice the stance taken up by none else or other than respondent No.1 – Punjabi University

itself in its counter filed in Civil Writ Petition No.5035 of 1990 which had been preferred by respondent No.3 – Dr.Promila Malhotra. The University, in the course of the counter, had seriously contested the claim raised by Dr.Promila Malhotra for issuance of a regular appointment. In para 2 of the counter, the following averments were made:

> "That merely because the petitioner was placed on the waiting list, it confers no right on the petitioner to compel the University to offer her a post on regular basis particularly when it is a case of one post and the incumbent selected for the post at No.1 had joined the post. After joining the selected candidate placed at Sr.No.1 in the waiting list becomes meaningless and no right can be claimed by the petitioner on that basis. The waiting list is kept only to cover up the contingency of the person selected not joining the post after selection or any other such unforeseen circumstances."

21. Insofar as respondent No.8 is concerned, it is her own plea in the counter that she had been initially appointed on 29.6.1990 against the leave vacancy of Dr.S.M.S. Chahal. Her further plea is that a regular vacancy arose when Dr.P.K.Sahajpal, who had proceeded on leave w.e.f. 14.11.1990, did not join duty and the post held by him was declared vacant in 1993, It is her own plea that "it was against that regular vacant post that the case of the answering respondent was considered by the Syndicate in its meeting held on 21.5.1993." The relevant resolution in the matter of her regularisation is No.308 dated 21.5.1993 (Annexure P18). In support of the decision of regularisation, it was noticed by the Syndicate that respondent No.8 had been initially appointed when Dr.S.M.S.Chahal proceeded on

leave for the period from 1.6.1988 to 31.5.1993. Dr.Chahal had been "appointed by UGC as Research Scientist for five years". In the advertisement, it was not indicated that applications had been invited for filling up a leave vacancy. However, it requires pertinent notice that it was categorically indicated in the interview letter issued to respondent No.8 that she was being called for interview against the leave vacancy. Apart therefrom, it was indicated in the appointment letter itself that the appointment of respondent No.8 was purely temporary upto 31.5.1993 or till Dr.S.M.S.Chahal join duty whichever was earlier. Thus, though the relevant advertisement was deficit in describing the character of the post, the real nature of the post (i.e. leave vacancy) had been notified to respondent No.8 in the interview letter itself. Even the appointment letter was categorical about the offer being relatable to a leave vacancy. Thus, respondent No.8 cannot be heard to make a grievance of the fact that the advertisement did not indicate that it was a leave vacancy.

22. It is further noticed in Annexure P18 itself that a regular vacancy had become available as Dr.P.K.Sahajpal, who was on leave w.e.f. 14.11.1990, did not re-join duty and his post was declared vacant. It was against this post that the regular appointment of respondent No.8 was ordered by the Syndicate.

23. Insofar as her regularisation against the post previously held by Dr.S.M.S.Chahal is concerned, there also respondent No.8 is not on a firmer footing. On the post held by Dr.P.K.Sahajpal becoming available, it was incumbent upon the Competent Authority to advertise the post and make a selection by affording opportunity to the other candidates as well. The Syndicate could not proceed on the premise that respondent No.8 had

become entitled to regularisation being an in-service candidate. As per the own decision by the Syndicate, a regular vacancy becoming available had to be announced to the whole world of candidates to enable meritorious candidate to come in. That decision of the Syndicate was in accord with the administrative instructions issued by the Government of Punjab vide Annexure PX. In the matter of appreciation of the controversy in issue, the following judgments may be noticed:

24. Hoshiar Singh Vs. State of Haryana, JT 1993 (5) SC 63, State of Bihar Vs. Madan Mohan Singh, 1993(5) SLR 601, Madan Lal Vs. State of Jammu and Kashmir, 1995(2) SLR 209.

25. The following facts are, thus, established on record:

The declining of regularisation of entitlement to the petitioner was in accord with the policy laid down by the Syndicate. The grant of regular appointment to respondents No.3 and 8 by the Syndicate was inappropriate and unjustified in view of the fact that both of them had been appointed against a leave vacancy and the character of their appointment could not be changed except by resort to the procedure of inviting applications from the candidates as well.

26. The edifice of the Indian Constitution being equality of opportunity to all similarly circumstanced, all authorities are mandated to act fairly and in accord with the law of the land. Any unconscionable approach by the Authorities impels legal action at the hands of the adversely affected individual and it puts avoidable strain on the judicial establishment which is obviously woefully deficit in the context of man power infrastructure. The possibility, thus, of certain other matters deserving urgent notice, getting overlooked for priority handling cannot be ruled out.

The interest of justice would obviously suffer thereby. The pain in the judicial mind becomes all the more agonising when it is noticed that the violator is none else or other than an establishment running the affairs of the temple of learning.

27. For the reasons noticed above, it is apparent that though the declining of regularisation to the petitioner was in accord with the policy laid down by the Syndicate, the grant of that benefit (regularisation) to respondents No.3 and 8 was indefensible.

28. The petition shall stand dismissed insofar as the petitioner's plea for regularisation of her services is concerned. At the same time, the impugned orders granting regularisation of services to respondents No.3 and 8 shall stand set aside.

29. The parties shall bear their own costs of the cause in the peculiar circumstances of the case.

(S. D. ANAND)
JUDGE

December 13, 2007
SRM

Note: Whether referred to reporter ? Yes/No